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No. 82-697

In the Supreme Court of the United States

OCTOBER TERM, 1982

DENNIS L. O'CONNOR, Petitioner,

v.

STATE OF NEVADA, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS (WILLIAM TEURMAN AND JOHN HILL) IN OPPOSITION

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In the
Supreme Court of the United States

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QUESTION PRESENTED

Whether the decision rendered by the United States Court of Appeals for the Ninth Circuit is contrary to prior rulings of this Court pertaining to judicial and prosecutorial immunity.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 686 F.2d 749 (1982) and also at page *1a* of the Appendix to the Brief of Respondents State of Nevada, Nevada Supreme Court and Third Judicial District Court. The opinion and Order Re Motions of the District Court which appear in said Appendix at page *4b*, is reported at 507 F.Supp. 546 (1981).

JURISDICTION

The judgment of the Court of Appeals was entered on August 24, 1982. The Petition for Writ of Certiorari was filed on or about October 14, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

42 U.S.C. Sections 1983, 1985 and 1986.

STATEMENT OF THE CASE

Initially, Respondents wish to point out that the so-called Statement Of The Case set forth on pages three through ten of the Petition of Dennis O'Connor is inaccurate, distorted and totally irrelevant to the issues involved herein. Respondents submit that matters involved herein must be restricted to the Record On Appeal before the Court of Appeals.

These Respondents incorporate herein by reference the Statement Of The Case contained in the Brief of Respondents State of Nevada, Nevada Supreme Court and Third Judicial District Court, and in the Briefs filed by Respondents in the Court of Appeals.

ARGUMENT

The decision of the Court of Appeals is correctly decided and does not conflict with any decision of this Court or any other Court of Appeals. None of the so-called issues raised by Petitioner contain new or unresolved issues, all of them having been previously decided by this Court and further review is unwarranted.

As to Respondent Judge William Teurman, the doctrine of judicial immunity, adopted by the United States Supreme Court in *Bradley v. Fisher,* 13 WALL. 335, 20 L.Ed. 646 (1872), exists for reasons well-founded in both public policy and good sense. That judges exercise their function without fear of reprisal or consequence is paramount to our legal system. *Scott v. Stansfield,* L.R. 3 EX. 220, (1868).

Petitioner's allegations are confusing. If these allegations are directed toward this Respondent's alleged abuse of judicial powers, then judicial immunity clearly applies. See *Pierson v. Ray,* 386 U.S. 547, 18 L.Ed.2d 288, 87 S.Ct. 1213 (1967); *Stump v. Sparkman,* 435 U.S. 349, 55 L.Ed. 331, 98 S.Ct. 1099 (1978).

If, on the other hand, the allegations are directed toward his testifying as a witness in a totally separate trial over which he was not presiding, then the law is clear that the Defendant is entitled to rely upon the absolute immunity extended to witnesses in judicial proceedings. Numerous Courts have held that witnesses in a state judicial proceeding are to be given absolute immunity from suits under the Civil Rights Acts. *Myers v. Bull,* 599 F.2d 863 [(8th Cir. 1979), cert. denied, 444 U.S. 901, 100 S.Ct. 213 (1980)]; *Blevins v. Ford,* 572 F.2d 1136, 1338 (9th Cir. 1978); *Burke v. Miller,* 580 F.2d 108, 109-10 (4th Cir. 1978); *Taylor v. Nichols,* 558 F.2d 561, 564 (10th Cir. 1977); *Brawer v. Horowitz,* 535 F.2d 830, 836-37 (3rd Cir. 1976). Further, the competency of a Judge to testify as a witness in a trial in which he is not presiding has been upheld in *United States v. Frankenthal,* 582 F.2d 1102 (7th Cir. 1978).

As to Respondent District Attorney John Hill, it has long been held that a prosecutor is absolutely immune from civil rights suits for activities allegedly committed while in the course and scope of his employment and duties as a prosecuting attorney. *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed. 2d 128 (1976).

The question of whether the failure to initiate prosecution could lead to award of damages in a civil rights action was specifically addressed in *Raitport v. Provident Nat. Bank,* 451 F.Supp. 522, 528 (E.D. Pa. 1978). The Court in the *Raitport* case held that the Assistant District Attorney was *absolutely immune* from liability for damages under 1983, and he was accordingly dismissed from the case. The Ninth Circuit Court of Appeals likewise recognizes the prosecutor's decision to prosecute—or not to prosecute—is intrinsically a function protected by the doctrine of prosecutorial immunity. *Robichaud v. Ronan,* 351 F.2d 533, 537 (9th Cir. 1965); *Sykes v. State of California, (Dept. of Motor Vehicles),* 497 F.2d 197, 200 (9th Cir. 1974).

The only case cited by Petitioner, *Scheurer v. Rhodes,* 416 U.S. 232, 40 L.Ed.2d 90, 94 S.Ct. 1683 (1974), is distinguishable both factually and legally and of no assistance herein. It is clear that District Attorney John Hill is entitled to the absolute prosecutorial immunity previously accorded by this Court in *Imbler v. Pachtman, supra.*

CONCLUSION

Respondents respectfully submit that Petitioner's request for a Writ of Certiorari must be denied.

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